

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
Charleston Division**

SOUTH CAROLINA COASTAL  
CONSERVATION LEAGUE, et al.,

Plaintiffs,

v.

ANDREW R. WHEELER, in his official  
capacity as Administrator of the U.S.  
Environmental Protection Agency, et al.,

Defendants,

and

AMERICAN FARM BUREAU  
FEDERATION, et al.,

Intervenor-Defendants.

Case No. 2:20-cv-01687-DCN

**DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT UNDER  
F.R.C.P. 56(a); IN THE ALTERNATIVE FOR LACK OF SUBJECT MATTER  
JURISDICTION UNDER F.R.C.P. 12(b)(1), 12(h)(3)**

NOW comes Defendants, Andrew Wheeler, Administrator of the U.S. Environmental Protection Agency, the U.S. Environmental Protection Agency, Ricky D. James, Assistant Secretary of the Army for Civil Works, and the U.S. Army, Corps of Engineers, to move before this Honorable Court for summary judgment in favor of the Defendants on all claims set forth in the Complaint. F.R.C.P. 56(a).

Plaintiffs brought this Administrative Procedure Act challenge to the Navigable Waters Protection Rule, which defines the term “waters of the United States” under the Clean Water Act. Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020). The Court should uphold the rule and enter judgment in favor of

Defendants because there is no genuine dispute as to any material fact and Defendants are entitled to judgment as a matter of law. Further, Plaintiffs lack standing to bring this challenge. Thus, this Court lacks subject matter jurisdiction under F.R.C.P. 12(b)(1); 12(h)(3).

We rely on our attached memorandum of law in support.

Dated: August 24, 2020

Respectfully submitted,

PETER M. MCCOY, JR.  
UNITED STATES ATTORNEY

By: /s/ Lee E. Berlinsky  
LEE E. BERLINSKY (Fed. ID# 05443)  
*Assistant United States Attorney*  
Liberty Center Building  
151 Meeting Street, Suite 200  
Charleston, SC 29402  
(843) 266-1679  
Lee.Berlinsky@usdoj.gov